

***Remarks***

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-4 and 29-40 are pending in the application, with claim 1 being the sole independent claim. Claims 4 and 29-33 are sought to be amended to correct for minor informalities. Applicants reserve the right to prosecute similar or broader claims, with respect to the amended claims, in the future. These changes should be entered after final as they raise no new issues and pose no new search requirement by the Examiner, and the changes place the application in condition for allowance and/or in better condition for appeal. Applicants believes these changes do not change the scope of the claims, and are only made to clarify the features already recited in the claims. These changes are believed to introduce no new matter, and their entry is respectfully requested.

The claims presented in this Application should be interpreted solely based on the file history of this Application, not the file history of any predecessor or related application. With respect to this application, Applicants hereby rescind any and all disclaimers of claim scope made in any parent application(s), any predecessor application(s), and any related application(s). The Examiner is advised that any previous disclaimer of claim scope, if any, and any references that allegedly caused any previous disclaimer of claim scope, may need to be revisited. Nor should any previous disclaimer of claim scope, if any, in this Application be read back into any predecessor or related application.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

***Rejections under 35 U.S.C. § 112***

**Claim 30**

Claim 30 stands rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the enablement requirement. Without acquiescing to the merits of this allegation, Applicant has amended claim 30 to accommodate the Examiner's rejection. Applicants respectfully request the rejection to claim 30 under 35 U.S.C. § 112, first paragraph, be reconsidered and withdrawn.

Claim 30 stands rejected under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Without acquiescing to the merits of this allegation, Applicant has amended claim 30 to accommodate the Examiner's rejection. Applicant respectfully request the rejection to claim 30 under 35 U.S.C. § 112, second paragraph, be reconsidered and withdrawn.

***Rejections under 35 U.S.C. § 103***

**Claims 1-3 and 33-39**

Claims 1-3 and 33-39 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over United States Patent No. 7,197,276 to Dale et. al ("Dale") in view of United States Patent Publication No. 2001/0034867 to Jaffe et. al ("Jaffe"). Applicants

respectfully traverse the rejection and provide the following arguments to support patentability.

Dale cannot be used as the basis for an obviousness rejection because it is subject to the exception of 35 U.S.C. § 103(c). According to 35 U.S.C. § 103(c), subject matter which qualifies as prior art under 35 U.S.C. § 102(e) does not preclude patentability under 35 U.S.C. § 103 if it is shown to be owned by the same person or subject to an obligation of assignment to the same person as the claimed invention at the time the invention was made. Here, the invention(s) claimed in this Application and Dale were, at the time the claimed invention(s) disclosed in this Application were made, owned by or subject to an obligation of assignment to the Assignee, Broadcom Corporation. For convenience of the Examiner, Applicants have provided a copy of "Patent Assignment Details" for Dale herewith as an Appendix. The "Patent Assignment Details" clearly demonstrate that Dale is subject to an obligation of assignment to the Assignee, Broadcom Corporation, at the time the invention(s) claimed in this Application were made. Therefore, Dale is not prior art against this Application under the exception of 35 U.S.C. § 103(c).

The Office Action correctly acknowledges that Jaffe does not teach or suggest each and every feature of independent claim 1. Office Action, pp. 3-6. Therefore, the Office Action has failed to make out a *prima facie* case of obviousness of claims 1-3 and 33-39. Accordingly, Applicants respectfully request that the rejection of claims 1-3 and 33-39 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Claim 4

Claim 4 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Dale in view of Jaffe and further in view of United States Patent Publication No. 2001/0055319 to Quigley et al. (herein "Quigley"). Applicants respectfully traverse the rejection and provide the following arguments to support patentability.

From the discussion above in regards to independent claim 1, Dale cannot be used as the basis for an obviousness rejection because it is subject to the exception of 35 U.S.C. § 103(c). The Office Action correctly acknowledges that Jaffe does not teach or suggest each and every feature of independent claim 1. Office Action, pp. 3-6. Quigley does not cure the deficiencies of Jaffe nor does the Office Action so allege. Therefore, the combination of Jaffe and Quigley cannot render independent claim 1 obvious. Dependent claim 4 is likewise not rendered obvious by the combination of Jaffe and Quigley for the same reasons as independent claim 1 from which it depends and further in view of its own respective features. Accordingly, Applicants respectfully request that the rejection of claim 4 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Claim 29-32

Claim 29-32 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Dale in view of Jaffe and further in view of United States Patent Publication No. 2002/0061012 to Thi et al. (herein "Thi"). Applicants respectfully traverse the rejection and provide the following arguments to support patentability.

From the discussion above in regards to independent claim 1, Dale cannot be used as the basis for an obviousness rejection because it is subject to the exception of 35

U.S.C. § 103(c). The Office Action correctly acknowledges that Jaffe does not teach or suggest each and every feature of independent claim 1. Office Action, pp. 3-6. Thi does not cure the deficiencies of Jaffe nor does the Office Action so allege. Therefore, the combination of Jaffe and Thi cannot render independent claim 1 obvious. Dependent claims 29-32 are likewise not rendered obvious by the combination of Jaffe and Thi for the same reasons as independent claim 1 from which they depend and further in view of their own respective features. Accordingly, Applicants respectfully request that the rejection of claims 29-32 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Claim 36

Claim 36 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Dale in view of Jaffe and further in view of United States Patent Publication No. 2003/0053435 to Sindhushayana et al. (herein "Sindhushayana"). Applicants respectfully traverse the rejection and provide the following arguments to support patentability.

From the discussion above in regards to independent claim 1, Dale cannot be used as the basis for an obviousness rejection because it is subject to the exception of 35 U.S.C. § 103(c). The Office Action correctly acknowledges that Jaffe does not teach or suggest each and every feature of independent claim 1. Office Action, pp. 3-6. Sindhushayana does not cure the deficiencies of Jaffe nor does the Office Action so allege. Therefore, the combination of Jaffe and Sindhushayana cannot render independent claim 1 obvious. Dependent claim 36 is likewise not rendered obvious by the combination of Jaffe and Sindhushayana for the same reasons as independent claim 1

from which it depends and further in view of its own respective features. Accordingly, Applicants respectfully request that the rejection of claim 36 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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***Appendix A: Patent Assignment Details for United States Patent No.  
7,197,276 to Dale et. al***



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**Title:** DOWNSTREAM ADAPTIVE MODULATION IN BROADBAND COMMUNICATIONS SYSTEMS**Assignors**

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